20094

No. 20084

In the

United States Court of Appeals

for the Ninth Circuit

EASTLAND CONSTRUCTION CO., INC.,
Appellant,

vs.

KEASBEY AND MATTISON COMPANY,
Appellee.

Brief for Appellee

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No. 20,084

In the

United States Court of Appeals

for the Ninth Circuit

EASTLAND CONSTRUCTION CO., INC.,
Appellant,

vs.

KEASBEY AND MATTISON COMPANY,
Appellee.

Brief for Appellee

I.

JURISDICTION

Judge Zirpoli in the court below dismissed the action as to defendant K & M for improper venue under § 12 of the Clayton Act, 15 U.S.C. 22, in that it was conceded by plaintiff-appellant that for almost 2½ years prior to the time this action was brought, the defendant had not transacted business in California.

Since the judgment entered on April 2, 1965 was final as to K & M, we concede that Your Honorable Court has jurisdiction to hear this appeal.

II.

STATUTE INVOLVED

15 U.S.C. 22 provides:

> "That any suit, action, or proceeding under the anti-trust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any judicial district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found."

III.

STATEMENT OF THE CASE

Because the instant complaint mirrors a federal indictment brought against Keasbey & Mattison Co. in June of 1962 and a parallel federal civil complaint against Keasbey & Mattison Co. filed July 25, 1962, the outcome of these federal actions and certain findings therein are relevant to this motion to dismiss.

On May 21, 1964, a Federal Jury in Philadelphia after a trial lasting four-and-one-half months brought in a verdict of not guilty in a criminal anti-trust case, (Criminal No. 21118 R. p. 52) thereby exonerating the defendant Keasbey & Mattison Co. (hereafter referred to as K & M) and its co-defendant, Johns-Manville Corporation, of all charges of alleged violations of the anti-trust laws in connection with the manufacture and sale of asbestos-cement pipe.

On December 22, 1964, the District Court Judge who heard the criminal case, granted summary judgment for K & M in the Government companion civil case (Civil No. 31791)[1] on the ground of mootness, inasmuch as K & M

1. This ended the civil suit against K & M. Insofar as plaintiff's statement that "A companion civil case is now pending," (plaintiff's brief, footnote 1 at p. 4) applies to K & M, it is in error.

had sold its asbestos-cement pipe assets and gone out of business. See *U.S. v. Johns-Manville, et al.,* 237 F. Supp. 885 (E.D. Pa., 1964); opinion appears in Record at pages 55 through 72. In his opinion, the District Court Judge made it clear that even applying the "fair preponderance" burden of proof test for a civil case, that the Government had failed to prove its charges of conspiracy and further that the K & M decision to go out of business and sell the pipe business "was dictated by valid and bona fide business reasons" (R. p. 59); and was not done to avoid the impact of the anti-trust laws. (R. p. 70)

Thus, came to an end an extraordinary chapter of almost continuous harassment of the defendant by the F.B.I., the Justice Department, various Government counsel and several Grand Juries over a period of almost nine years. (R. p. 70)

The present Summons and Complaint has been brought against K & M by a plaintiff, who has never bought an inch of pipe from defendant and who has never had any business dealings with the defendant. (R. p. 2) It calls upon the defendant to retain counsel and appear to defend, in a jurisdiction some 3,000 miles away from its home, a groundless claim based upon almost a verbatim copy of the Indictment and complaint in the two cases where defendant has already been completely exonerated.

In an effort to head off any further burdensome expense, the defendant, K & M moved the District Court below to strike off the service, or in the alternative, to dismiss the action because of improper venue, to grant summary judgment for the defendant, and to grant a stay of all discovery proceedings on the issue of the defendant's alleged liability to plaintiff (R. p. 154) pending disposition of these motions.

The court below found that venue was improper and by order of April 2nd, 1965, judgment was entered for defendant K & M.

Plaintiff appealed. This brief is filed by defendant-appellee in opposition to plaintiff-appellant's position.

IV.

QUESTION PRESENTED

In determining proper venue under 15 U.S.C. 22 in a private anti-trust action for damages, must not the operative facts of defendant's business activities within a judicial district be determined as of the date the court's jurisdiction attaches and not as of the date when the alleged cause of action arose?

V.

SUMMARY OF ARGUMENT

1.) 15 U.S.C. 22, couched as it is in the present, not past tense, means exactly what it says—i.e. that the operative facts as to business activity which determine where a private treble damage action under the anti-trust laws may be brought, are to be determined as of the date the action is brought—and not as of the date when the alleged cause of action arose. *Schreiber v. Loews, Inc.,* 147 F. Supp. 319 (U.S.D.C., W.D. Mich. S.D. 1957); *Newmark v. Abeel,* (D.C. N.Y. 1952) CCH 1952 Trade Cases ¶ 67,268.

2.) The 1955 amendment to Section 5 of the Clayton Act, now 15 U.S.C. 16 (b), which provides for tolling of the statute of limitations during pendency of the Government's civil or criminal action, has no relevance or bearing whatsoever on *the place* where a private treble damage action may be brought. This amendment manifests no intent of the Congress to amend or broaden the applicable

venue statutes. It applies to *when,* and not *where,* such an action may be brought.

3.) There is nothing in the holding or the opinion in *U. S. v. Scophony Corporation,* 333 U.S. 795, 68 S. Ct. 855 (1948), that supports plaintiff—appellant's position on venue—since the Court there specifically used the present tense test in measuring the defendant's activities for venue purposes.

Furthermore, the Supreme Court's reference at page 808 to a foreign corporation's "hit and run" activities has no bearing on the instant case, where, as here, there was a bona fide termination of *all* business activities, wherever previously conducted; and, as pointed out by Judge Zirpoli, the defendant "K & M ceased to do business in California and has not done any business in this state . . . for two years, five months and 18 days" prior to the filing of suit in this case. (R. p. 149)

VI.

ARGUMENT

A. Introduction.

By way of introduction, may we respectfully call to your Honorable Court's attention the decision of District Court Judge Van Dusen in granting summary judgment for K & M in the Government civil case *U. S. v. Johns-Manville et al.,* 237 F. Supp. 885 (E.D. Pa., 1964). This Opinion, together with the supporting affidavits on which he relied in part, is attached as Exhibit E to the K & M Motion papers (R. 55 through 149). It gives a much clearer picture of some of the more basic facts than we could or should attempt to set forth in this Memorandum Brief.

Suffice it to say that on or after June 1, 1962, K & M, in an arm's length transaction and unrelated to the spurious

anti-trust charges levelled against it, sold all of its asbestos pipe equipment and assets in exchange for shares of stock in the acquiring corporation, Certain-teed Products Corporation. K & M then liquidated its cash and remaining assets, i.e. the shares of Certain-teed stock, by making distributions to its shareholders. On and after June 1, 1962, Certain-teed took over some of K & M's employees, but not its principal executive officers, and began to operate the business it had purchased from K & M.

B. Defendant's Activities Do Not Meet Any of the Tests for Venue Under 15 U.S.C. 22.

Plaintiff seeks to establish venue under § 12 of the Clayton Act, 15 U.S.C. 22[2], which reads as follows:

> "Any suit, action, or proceeding under the anti-trust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found. Oct. 15, 1914, c. 323, § 12, 38 Stat. 736."

What then are the legal tests to be applied in determining whether, at the time the action was brought[3], K & M was:

(1) an inhabitant of,

(2) found in, or

(3) transacting business in

the Federal Judicial Northern District of California?

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2. If there is no venue under 15 U.S.C. 22, a fortiori, venue would fail under § 4 of the Clayton Act—15 U.S.C. 15.

3. The jurisdiction facts which control the procedural questions of venue are determined as of the time suit was brought. See *Schreiber v. Loews, Inc.*, 147 F. Supp. 309 (U.S.D.C. Michigan, S.D. 1957).

1. K & M WAS NOT "AN INHABITANT OF" THE FEDERAL JUDICIAL NORTHERN DISTRICT OF CALIFORNIA.

K & M was clearly not, at the time the instant action was brought, "an inhabitant of" the Federal Judicial Northern District of California. The term "inhabitant" has been held to mean the state of incorporation or where the corporation has its principal place of business. See *U.S. v. Scophony Corp.,* 333 U.S. 795 at 809, footnote 20.

As appears from the affidavit of C. B. Brown, the present President of K & M (See Exhibit F attached to the Motion, R. p. 13), K & M, at the time this suit was commenced, had no place of business or office within the State of California, and had never been incorporated in the State of California. K & M is and always has been incorporated solely under the laws of the Commonwealth of Pennsylvania. Thus, for venue purposes, it is an "inhabitant" only of Pennsylvania, and may only be sued within the proper judicial district located within that State.

2. K & M WAS NOT "FOUND WITHIN" THE FEDERAL JUDICIAL NORTHERN DISTRICT OF CALIFORNIA.

As pointed out in the *Eastman* case, infra, the term "found in" means being present within a state through the presence of officers or agents carrying on the corporation's business. See *Eastman Co. v. Southern Photo,* 273 U.S. 359 at 371.

Here again, the affidavit of Mr. Brown, and the Opinion of Judge Van Dusen (Ex. E, R. p. 55) with the accompanying affidavits attached to that Opinion (R. p. 73-149), make it clear that since June 1, 1962, K & M has done no business whatsoever in California or elsewhere; has sold all of its assets; has no employees; and in the words of Mr. Brown "is nothing more than a paper shell awaiting final tax clearance from the Commonwealth of Pennsylvania, following

receipt of which it will file with the Secretary of the Commonwealth of Pennsylvania, Articles of Dissolution which will terminate its corporate existence." (See Brown affidavit, Ex. F ¶ 1 R. p. 13)

3. K&M WAS NOT "TRANSACTING BUSINESS IN" THE FEDERAL JUDICIAL NORTHERN DISTRICT OF CALIFORNIA.

As pointed out in *U.S. v. Scophony Corp.*, the term "transacting business" as used in § 12 of the Clayton Act, was intended to liberalize and broaden the earlier concepts of venue—so that today the test for venue under this Section now becomes "the practical everyday business or commercial concept of doing or carrying on business of any substantial character". See 333 U.S. 795 at 807.

Here again, it is clear that under this test, K & M was not transacting business in California at, or for some time prior to the instant suit having been started, because on and after June 1, 1962, it transacted no business anywhere. Furthermore, as appears from Mr. Brown's affidavit, at no time has the defendant, K & M ever sold any pipe to the plaintiff or had any business transactions with it in California or elsewhere.

C. The Test of Business Activities Under 15 U.S.C. 22 Is Phrased in the Present—Not the Past Tense. Thus the Business Activities of a Defendant Are Measured as of the Date When the Action Is Begun.

While the question of venue is admittedly a procedural one, and might be viewed by some as a technical defense, we believe that this defense has special merit and application to the case at bar. The very concept of venue contemplates that there should, in all fairness, be certain restrictions on the extent to which a party may be sued in various parts of this large country in which we live. As was said

in *Jacobson v. Indianapolis Power and Light Co.,* 163 F. Supp. 218 (N.D. Ind. 1958):

> "Historically the privilege of venue has been allowed so that suits will be brought in forums having a logical connection with the parties to the litigation. Generally venue relates to the convenience of the parties and affords a defendant some protection against the threat of being forced to defend an action at a place far removed from his residence." (at 223)

Here, a plaintiff, who has never bought any products from the defendant or never had any business dealings with it, has chosen to bring an action under an Act of Congress which spells out exactly the terms and conditions on how and where such an action may be brought.

The plaintiff has not followed the mandate of Congress in choosing the place of suit—at least as regards the defendant, K & M. Plaintiff, instead, has chosen a forum which may be convenient for his counsel but one which would work a great hardship on the defendant. Furthermore, none of the cases plaintiff has cited as supporting his view of Congressional policy deal with venue. (Plaintiff's brief p. 7f.) They seem rather to deal with matters having far different policy considerations: *Flintkote Company v. Lysfjord,* 246 F. 2d 368, 398 (9th Circuit, 1957) deals with joint and several-liability for punitive damages; *Olympic Refining Co. v. Carter,* 332 F. 2d 260, 264 (9th Circuit, 1964) with discovery; *Lawlor v. National Screen Service,* 349 U.S. 322 (1955) with res judicata effect of a previous action with different defendants; *Bruce's Juices, Inc. v. American Can Co.,* 330 U.S. 743 (1947), with the legality of a contract under the Robinson-Patman Act.

The defendant, K & M, is now in its final steps of dissolution, said steps having been taken in its home state—the state of its incorporation and where it formerly had

its principal place of business. This is where its records and its counsel are. Parenthetically, the Commonwealth of Pennsylvania would also seem to be the most convenient forum if the plaintiff had a valid cause of action—which we respectfully submit he does not—because this is where the Grand Jury sat and where most all of the documents and records which were used by the Government in its case remain and where many of the witnesses who testified reside. Suffice it to say that the only remaining vestiges of K & M's corporate existence remain in and only within the Federal Judicial District for Eastern Pennsylvania.

Considering the tremendous burden and expense in connection with anti-trust matters to which the defendant, K & M, has been subjected almost continuously since the Fall of 1956, (see footnote 12 at page 18, Judge Van Dusen's Opinion—Exhibit E, R. p. 72) and its subsequent complete vindication, we submit that it would be manifestly unfair to now require this defendant to incur the additional expense and problems of defending a lawsuit so many thousands of miles away from home base.

Had the Congress felt in its wisdom that a corporation, having once transacted business within a state, should always remain subject to suit in a Federal Court in that state, it could have so provided. As was stated in *Lindstrom v. Commissioner of Internal Revenue,* 149 F. 2d 344 (9th Cir. 1945) at page 346: "The will of Congress has been plainly expressed in language that does not permit or require a strained or immaterial interpretation. The words of the statute may not be extended beyond their plain popular meaning."

In Toulmin's Anti-Trust Laws, Vol. VI, Section 4.14 it is stated:

> "The defendant must be, at the time process is issued transacting business in the district. If it had merely

transacted business in the past that is not enough to authorize the service of process."

In this connection see *Schreiber v. Loews, Inc.,* 147 F. Supp. 319 (U.S.D.C. W.D. Michigan S.D. 1957) where District Judge Kent pointed out that the venue statute with which we are concerned is phrased in the *present,* not the past tense.

> "In effect the plaintiffs claim that the statutes applicable to this situation should be interpreted to read 'a corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business *or has done business in such a manner as to create a claimed cause of action.*' However, the provisions of the venue section of the Clayton Act, Title 15 U.S.C.A. § 22, and the provisions of the general venue statute Title 28 U.S.C.A. § 1391 (c) are phrased in the present tense, and do not give any right except as a corporation may be found actually present in or doing business in a state." (at 324)

For a case almost on all fours with the case at bar, see *Newmark v. Abeel,* (D.C. S.D. N.Y. 1952) CCH 1952 Trade Cases ¶ 67,268. This was an action brought in the Southern District of New York against a New Jersey corporation that had been dissolved about two years before suit was started. The defendant corporation was served at its registered office in New Jersey.

To support venue under 15 U.S.C. § 12, the plaintiff offered affidavits relating to alleged activities within the Southern District of New York several years before suit was started. In granting defendants motion to dismiss for lack of venue, Judge Weinfeld stated:

> "Whether the defendants are 'found' or 'transacting business' in this district is in sharp dispute. The affidavits submitted by plaintiff relate to activities of the

> defendants during 1949 and earlier years. On this motion the issue is whether the defendants were 'found' or 'transacting business' *here at the time of service of process.*" (at 67475) (emphasis added)

The most recent case to apply the present tense test of venue is *Snyder v. Eastern Auto Distributors, Inc.* U.S.D.C. W.D.S.C. (1965), 1965 Trade Cases ¶ 71,448. In this case, under a venue statute couched in the same present-tense language as 15 U.S.C. 22,[4] the defendant, attacking venue, had withdrawn the franchise of his automobile dealer less than two months before action was brought, and was, when the action was brought, still engaged in supervising the return of automobiles.

In holding venue not proper since the defendant did not reside or was not found or did not have an agent in South Carolina, the court stated:

> "The question of whether a corporation is 'doing business' or 'is found' within a state must be determined as of the time the action was filed, Cf. *Prolex (sic) Steel Corp. v. Luria Brothers and Co.,* 225 F. Supp. 412." (at 80,963)

It then found that even if the district sales manager were considered as the corporation's agent, "his visit was not part of a systematic and continuous activity".

Thus, in a situation similar to our own, as to facts and venue statute, the court found that after less than two months of cessation of doing business, venue was improper. Quoting from *Prolex,* infra, p. 413, the court said:

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4. 15 U.S.C. 1222 reads:
> "An automobile dealer may bring suit against any automobile manufacturer engaged in commerce, in any district court of the United States in the district in which said manufacturer resides, or is found, or has an agent . . ."

"It is well settled that venue and jurisdiction are determined by the facts as they exist at the time the action is filed." (at page 80,965)

We submit, the statute here involved is clear and unambiguous. It is couched in the present tense and the only possible interpretation that can be given to this clear language is that the Congress intended that the question of venue be measured by the facts existing at the time the court's jurisdiction is invoked and the defendant is required to appear and defend.

D. The 1955 Amendment to Section 5 of the Clayton Act (15 U.S.C. 16 b) Providing for Tolling of the Statute of Limitations During Pendency of the Government's Civil or Criminal Actions, Has No Relevance or Bearing Whatsoever on Venue Requirements of the Same Act.

Plaintiff devotes much attention to a possible relationship between the statute of limitations amendment provisions and venue provisions. These provisions have very different bases.

The statute of limitations concerns *when* an action may be brought. It bars action when claims become stale and evidence uncertain. The extension of the tolling period of the statute was to both allow the plaintiff time to study the government's case (which cannot benefit plaintiff here since K & M was acquitted) and to prevent harassment of the defendant with multitudinous suits.

However, venue is concerned with *where* an action may be brought. It is based upon the connection between the forum and the parties to the litigation, and in great measure is designed to protect the defendant from harassment involving defense of an action far from its home. See *Jacobson v. Indianapolis Power and Light Company,* supra.

Plaintiff argues that the Congress in amending and broadening the Statute of Limitations provisions, manifested an intent to benefit treble damage plaintiffs; and that it would frustrate the intent of Congress if venue provisions currently in effect were interpreted to make the bringing of an action by Plaintiff more difficult. This argument, we suggest, is a complete non sequitur. For if that was the intent of Congress why would it not also have changed the venue provisions? Because Congress had seen fit to liberalize one provision of the statute (dealing with *when* an action must be brought) does not mean that another provision of the statute (dealing with *where* such a suit may be brought) and having entirely different policy bases, should be interpreted contrary to the clear language of the statute as worded.

E. The Case of U. S. v. Scophony Corp. 333 U.S. 795, Does Not Support Appellant's Contention That Venue May Be Based Upon Past Business Activities.

The U. S. Supreme Court decision in *U.S. v. Scophony* is no authority for plaintiff's proposition advanced at pages 12-17 of its brief that the test of venue is measured as of the date the alleged wrongful act occurred.

In Scophony, the court had to determine whether the American anti-trust laws could reach a British corporation that had, and was at the time suit was started and processed served, engaged in a number of activities in the district in which venue was founded.

In the course of holding that the sum total of defendant's activities constituted "transacting business" in the ordinary lay sense, the court made clear, as appears in the underlined portions below, that venue is tested by the defendant's activities at the time of suit and not the past activities; and

furthermore totally rejected Scophony's contention that its activities were those of a corporation attempting to disengage and cease doing business:

> "To say that on the facts presented Scophony transacted no business 'of any substantial character' there *during the period covered by institution of the suit and the times of serving process* would be to disregard the practical, non-technical, business standard supplied by 'or transacts business' in the venue provision. . . .
>
> "Scophony's operations in New York were a continuous course of business before and throughout the period in question here." (at 810) (Emphasis added)

further,

> "Those efforts were not cessation of engaging in business. They were directed entirely to ward off that fate. Their object was not to liquidate, it was to resuscitate the business of Scophony and, as in all previous stages, put it on a normal course again. In doing all this, Scophony was engaging in business constantly and continuously not retiring from it or interrupting it. (citing cases) The interruptions were only in particular phases of its authorized adventure, not in the continuity, intensity or totality of the adventure itself." (at 816)

and again

> "We think that Scophony not only was 'transacting business' of a substantial character in the New York district *at the times of service, so as to establish venue there,* but also on the sum of the facts regarding its activities was 'found' there within the meaning of the service-of-process clause of § 12." (at 818) (Emphasis added)

In the course of its opinion, the Court at page 808 made a statement which is clearly dictum, to the effect that no longer could a foreign corporation come into a jurisdiction,

"perpetrate there the injuries outlawed, and then by retreating to its headquarters defeat or delay the retribution due".

While this dictum might have some application to the facts in Scophony, it clearly has no application here.

In the first place, Scophony was a corporation whose headquarters were in a foreign country—and if Scophony could not be sued and served in the Southern District of New York, it could not be sued anywhere else in the U.S.A. —and hence would have been effectively insulated from its alleged wrongful activities. K & M on the other hand is still a corporation registered to do business in Pennsylvania and clearly subject to service of process there.

Secondly, Scophony was admittedly engaged in certain activities within the district between the time suit was started and process was served—but the defense was that these activities did not constitute the doing of or transacting business. The Supreme Court held to the contrary. K & M at no time during the comparable period was engaged in any activities whatsoever.

Finally, the court, as pointed out in the quotes above, rejected Scophony's contention that it had ceased to do business within the district. Scophony was still very much a viable and ongoing business entity. K & M, on the other hand, had ceased doing all business—and such cessation was found by Judge Van Dusen (in granting summary judgment for K & M in the companion government civil case), to have been done for good and valid business reasons—and not in any effort to escape liability under the anti-trust laws.

Plaintiff, at pages 15 and 16 of its brief, places heavy reliance on the *Coulter* and *Ross-Bart* cases because these

two District Court cases picked up the "hit and run" language of *Scophony* discussed above and applied it to a resolution of venue and service problems.

Plaintiff cites *Coulter* as authority for the proposition that "transacts" can mean "transacted," because the court held venue proper in a district where defendant had filed an affidavit purporting to show that it had transacted no business within the district within the past year (Plaintiff's brief, page 15). But plaintiff fails to mention that the plaintiff in *Coulter* alleged that defendant had continued to do business in the district to the time of service, though it might have ceased doing "regular" business there.

Plaintiff cites *Ross-Bart* for the same proposition (Plaintiff's brief, page 16). But *Ross-Bart* held only that the absence of the defendant in the district did not preclude *service of process* there. On the issue of *venue, Ross-Bart* is authority for the opposite proposition:

> "Of course, the present decision does not foreclose the defendant from renewing the point now made, either on the claim of *no venue* or in the defense of no participation in the offenses alleged." (at 403) (Emphasis added).

Plaintiff's argument makes much of the possibility that a firm may cease to do business in a state merely to make the bringing of an action more difficult for the plaintiff. We submit that here, with no evidence of bad faith, Congressional intent would be carried out by holding that K & M was not transacting business in California for venue purposes of Section 12.

When a firm ceases to do business within a state, there is a difference between "retreating" to avoid suit ("hit and run") and "liquidating" a corporation for legitimate busi-

ness reasons. The former is what the Court in Scophony (where interlocking directorates between a parent and subsidiary corporation were concerned) was referring to when it looked to elements of transacting business.

It would, we submit, frustrate the purposes of the Clayton Act to read a Congressional intent into § 12 to penalize K & M's decision to liquidate by making it defend a suit three thousand miles from its home, when the decision to liquidate was undertaken in good faith and for reasons of economic efficiency.

There is no allegation here that K & M's liquidation was to avoid suit. The evidence in fact all points in K & M's favor. Judge Van Dusen, in granting K & M's Motion for Summary Judgment (*U.S. v. Johns-Manville Corp., et al.*, supra), said, quoting from an affidavit filed by Mr. Bateman, a member of K & M's Board of Directors:

> "The decision to sell the pipe business was dictated by valid and bona fide business reasons." (R. p. 59)

Further, Justice Van Dusen said:

> "None of the principal officers of K & M during the period from the spring of 1957 to April 1962 are now employed by Certain-teed (the corporation acquiring K & M's assets, except for the former sales manager." (R. p. 61)

and concluding (R. p. 70):

> "The record does not support the government's charges that the sale of the asbestos-cement pipe assets of K & M was done to avoid the anti-trust laws, that the sale of assets was a change in form rather than substance, and that neither K & M nor its parent T & N, has abandoned the offensive conduct of which it is accused."

VII.

CONCLUSION

In short, we find no compelling reasons of anti-trust policy which would dictate that venue be brought in California.

We submit that the Congress for good cause has decided not to make a corporation subject to suit in any judicial district wherever it, at any time, had transacted any business.

If plaintiff has a valid cause of action, it should bring this action against this defendant within the judicial district of the state wherein the defendant corporation is an "inhabitant"—and nowhere else. We respectfully ask your Honorable Court to affirm the dismissal of this case for lack of proper venue.

Dated: San Francisco, California, July 26, 1965.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

Dated: San Francisco, California, July 26, 1965.

CHRISTOPHER M. JENKS
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